STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on January 22, 2003

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman[1]
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 98-C-1357 – Proceeding on Motion of the Commission to Examine New York Telephone Rates for Unbundled Network Elements.

ORDER DENYING REHEARING PETITIONS

(Issued and Effective February 6, 2003)

BY THE COMMISSION:

Verizon New York Inc. (Verizon) filed tariff amendments to comply with the Commission's "Order on Unbundled Elements"(UNE Rate Order),[2] which established new rates for Verizon's unbundled network elements (UNEs). These proposed tariff amendments, which included revisions to Tariffs PSC NY Nos. 1,8,9 and 10, were approved in part and modified in part by the Commission in its "Order Approving Compliance Tariff subject

[1] Chairman Helmer served as Chairman until January 31, 2003.

[2] Case 98-C-1357, Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Order on Unbundled Network Elements (issued January 28, 2002).

to Modifications"[3] (Compliance Order). Verizon and AT&T Communications of New York, Inc. (AT&T) with WorldCom, Inc. (AT&T/WorldCom) have petitioned for rehearing of the Compliance Order. In addition, RCN Telecom Service, Inc. (RCN) submitted a letter in lieu of a brief, to which Verizon responded.

Verizon's Petition for Rehearing

Verizon seeks reconsideration of two aspects of the Compliance Order. First, Verizon argues that the rates for Digital Trunk Ports, 911/E911 Ports, and Voice Dialing on Integrated Services Digital Network (ISDN) should be restored to the levels that Verizon set forth in its tariff filing. Second, Verizon states that "expedite" charges should be available in those instances where Verizon makes good faith efforts to provide expedited service, and incurs costs for doing so, but is unable to achieve the shorter provisioning intervals for reasons beyond its control.

Digital Trunk Port Rate

Aside from requiring Verizon to reduce the overall local switching investment levels assumed in Verizon's cost studies, the UNE Rate Order also mandated that a greater percentage of the investment be assigned for recovery by the non-traffic sensitive rate elements associated with the switch, leaving a smaller percentage of the total investment for recovery by the traffic sensitive or usage elements. The interaction of those two rulings, Verizon notes, meant that

[3] Cases 98-C-1357, 00-C-1945, Proceeding on Motion of the Commission to Consider Recovery by Verizon and to Investigate the Future Regulatory Framework, Order Approving Compliance Tariff Subject to Modifications (issued October 15, 2002).

different adjustments were required for traffic sensitive and non-traffic sensitive investments.[4]

Verizon argues that the Compliance Order adopted rates for Digital Trunk Ports, 911/E911 and ISDN Features/Voice Dialing that were lower than those rates that Verizon had set forth in its compliance filing.[5] Verizon notes that the Compliance Order states that there were "various discrepancies" between Verizon's rates and the computations by staff. This "discrepancy," according to Verizon, is the result of staff applying a much lower adjustment factor (i.e., the total switch or average factor) to the End Office Trunk Port investments than Verizon used in its compliance filing.[6] This lower adjustment factor, which Verizon states was applied only to the End Office Trunk Port and not to other local switching investments, was an average of the traffic sensitive and non-traffic sensitive factors. "By using an adjustment factor calculated on a total-switch basis, but applying it selectively, to only some switch investment, staff's computation set rates that clearly fail to recognize a substantial portion of the switch investment level

[4] The Commission directed that 34% of the investment be allocated to traffic sensitive and 66% to non-traffic sensitive (as compared with Verizon's proposed allocation of 64% traffic sensitive and 36% non-traffic sensitive). Thus, the shift of investment to non-traffic sensitive resulted in an increase in total non-traffic sensitive recovery (compared with Verizon's cost study) and a reduction in traffic sensitive recovery.

[5] Verizon had filed rates of $190.30/month for the Digital Trunk Port and 911/E911 Port; staff computed a rate of $102.40 for each. Verizon filed a rate of $1.44/month for ISDN Voice Dialing; staff computed a rate of $1.38/month. The Commission adopted the rates based on staff's calculations.

[6] Verizon states that the basic discrepancy is in the calculation of the End Office Trunk Port Rate. The two other rates at issue here are derived from that rate.

approved in the UNE Rate Order."[7] Verizon states that the only justification offered for the calculation is that Verizon made the same mistake in the End Office Trunk Port rate that was first filed pursuant to the Recommended Decision[8] in this case.

Verizon queries whether it should be held to a rate that clearly fails to recognize a significant portion of the investment approved by the Commission in the UNE Rate Order merely because it failed to catch a computational error that was made by staff in its own rate calculation. Verizon argues that there is no question that Verizon and staff were attempting to set rates that would achieve the investment levels set out in the UNE Rate Order. Verizon distinguishes this computational error from a dispute over input values or substantive cost study approaches, where a party must file an objection or risk waiver if it fails to do so. Verizon posits that a gross injustice would result if the Commission prevented it from correcting its original failure to catch the calculation error because Verizon would recover less than the Commission-authorized investment levels.

In response, AT&T/WorldCom dispute Verizon's position that the difference between the digital trunk port rate adopted by the Commission and Verizon's proposed rate is only a computational error. AT&T/WorldCom state that the digital trunk port rate set forth by the Commission is the correct rate because, based upon their calculation, it is the only rate that will yield an overall switch investment of $105 per line, as set out in the UNE Rate Order. If the Commission granted Verizon's rehearing petition on this issue, the resulting rate would be

[7] Verizon Petition for Rehearing, p. 4.

[8] Case 98-C-1357, Recommended Decision (issued May 16, 2001).

higher than $105 per line. According to AT&T/WorldCom, Verizon's suggestion that the non-traffic sensitive factor be used to increase the digital port rate would result in a cost overstatement, by producing rates in excess of $105 per line investment.

While asserting that Verizon's arguments are substantively in error and should be denied by the Commission, AT&T/WorldCom agree that Verizon should not be held to rates resulting from a calculation error in Verizon's rate set forth in the Recommended Decision.[9]

Discussion

The gist of the UNE Rate Order with respect to switching costs was that the company's cost study did not properly allocate switching investments. Accordingly, the UNE Rate Order called for less investments to be recovered from usage rates and more investments recovered from non-usage rates. Therefore, usage based switching rates were treated as recovering traffic sensitive costs and flat rate or non-usage rates were treated as recovering non-traffic sensitive costs. In general, rates were adjusted by traffic sensitive and non-traffic sensitive factors, respectively, to recover relatively more costs from non-traffic sensitive rates and less from traffic sensitive costs.

[9] In support of this position, AT&T/WorldCom state the same arguments were made in their rehearing petition (discussed infra) where AT&T/WorldCom argue that the Commission committed an error of law by holding them accountable for not excepting to Verizon's rates that were in the Recommended Decision. AT&T/WorldCom state that Verizon's argument validates the position taken in AT&T/WorldCom's petition and provides additional grounds for granting AT&T/WorldCom's petition on this issue.

The essence of Verizon's argument is that the End Office Trunk Port is a non-traffic sensitive facility and Verizon focuses on how its cost study assigned switching investment between traffic sensitive and non-traffic sensitive functions. However, the Commission's analysis of the allocation of cost recovery for switching costs between usage sensitive and non-usage sensitive rates did not accept Verizon's approach. Verizon's claim that the End Office Trunk Port is a non-traffic sensitive facility is undermined by the fact a significant portion of the End Office Trunk Port is recovered on a minute-of-use basis. For these reasons, we reject Verizon's claim that all End Office Trunk Port investments are non-traffic sensitive.

Verizon next claims that, by not using the higher non-traffic sensitive specific adjustment factor for the End Office Trunk Port investment, the resulting rates would result in an under recovery of the allowed investment. Verizon goes on to note that the under recovery of investment would occur unless there was a corresponding increase in traffic sensitive investment by applying the average adjustment factor to traffic sensitive investment as well. That is precisely what happened. The usage based End Office Trunk Port rate, which is set forth in Appendix A of the Verizon Incentive Plan, was established by applying the total switch or average adjustment factor. This application occurred because Verizon used the average adjustment factor in computing Recommended Decision compliance rates in its Brief on Exceptions for trunk rates. Thus, the usage based End Office Trunk Port rate in Appendix A of the Verizon Incentive Plan is based on the average factor. Having used the average adjustment factor for the End Office Trunk Port usage based rate, it makes sense to also use that same factor for the remaining trunk rates consistent with Verizon's compliance rates

in its brief on exceptions. Otherwise Verizon could over recover its switching investment.

Verizon has not established that the rates set by the Commission will result in the recovery of less than the $105 per line switch investment established by the Commission. While AT&T/WorldCom claim that Verizon's petition, if granted, would result in rates reflective of a switch investment higher than $105 per line, we believe the AT&T/WorldCom study has flaws. Verizon's adjustments to the AT&T/WorldCom calculations, although correcting for some flaws, are also not without errors. Neither AT&T/WorldCom's nor Verizon's presentations account for recovery based on the trunk port usage rate. For the reasons stated above and in the absence of a showing by Verizon that the Commission-established rates would prevent the company from recovering the switch investment of $105 per line, Verizon's rehearing petition to increase certain End Office Trunk Port rates will be denied.

Applicability of "Expedite" Charges

The UNE Compliance Order concluded that Verizon is entitled to the higher charge for expedited service only when it actually provides expedited service. To ensure that the expedite charge is applied in a consistent manner, the Commission directed Verizon to modify its tariff to conform to a similar provision in its federal tariff, which states that the higher rate shall not apply in those instances when Verizon does not complete the order in less than the standard interval.[10]

Verizon submits that this decision is erroneous. According to Verizon, the Telecommunications Act of 1996 (the

[10] Compliance Order, pp. 20 – 21.

Act)[11] and the accompanying regulations allow the recovery of Verizon's costs. Verizon argues that its costs are based on its efforts to provide expedited service. These costs are still incurred even where, due to unforeseen circumstances, Verizon is unable to meet the shorter interval. To find that Verizon is entitled to the higher charge for expedited service only when it actually provides expedited service would violate the cost recovery provisions of the Act.

Verizon also argues that conforming the state tariff provisions to the federal tariff provisions is not warranted here as Verizon is required to abide by different terms and conditions for each tariff. Specifically, Verizon states that its offering of UNEs is not voluntary, rather, it is required by the Act and UNEs are priced at Total Element Long Run Incremental Cost (TELRIC). Verizon's offering of services under its federal tariff, on the other hand, is part of a larger set of rights and obligations that are defined in the federal tariff. Verizon concludes that "[t]here is no reason why the two tariffs need to be consistent in this respect, particularly since they govern totally different suites of products under terms and conditions that already differ in numerous other ways."[12]

AT&T/Worldcom respond that Verizon should not be permitted to retain the higher charge for expedited service in those instances when it fails to provide the service in the shorter time interval. Analogizing this service to a letter sent by Express Mail, the higher fee for an Express Mail letter is paid if the letter is delivered within the time interval or

[11] See 47 USC §252(d).

[12] Verizon Petition for Rehearing, p.8.

the fee is returned to the customer. AT&T/WorldCom argue that the same situation is present: either a CLEC would pay the regular loop provisioning non-recurring charge (NRC) and would receive service within the standard interval, or the CLEC would pay the higher NRC and receive service in an expedited time period. However, unlike the Postal Service, AT&T/WorldCom state that Verizon only wants to put forth a good faith effort to provide the expedited service.

AT&T/WorldCom urges the Commission to reject these arguments on several grounds. First, Verizon has no incentive to provide expedited service without a tariff that provides such an incentive to deliver the expedited service. Second, the Commission has heard these arguments and has already rejected them; hence, there is no reason to revisit them. Since Verizon is not asserting that the Commission has committed an error in law or fact, AT&T/WorldCom aver that the Commission should reject these arguments.

Discussion

The underlying purpose of the expedited charge is to permit a CLEC to receive service in a shorter period of time provided the CLEC is willing to pay the higher charge for the service. To permit Verizon to retain the expedited charge in those instances when it did not provide the service within the shorter interval would vitiate the purpose of the charge: a CLEC would be paying a higher charge and would not be receiving expedited service. We agree with AT&T/WorldCom that there would be little, if any, incentive for Verizon to provide the service in the shorter interval if it were permitted to retain the expedited charge in those circumstances when service was not provided in the shorter period of time. We disagree with Verizon’s contention that the principle underlying the federal tariff should not be applied to the state tariff. The notion

that one should only pay for services received is on point irrespective of the nature of the service. Verizon's request for rehearing on this point will be denied.

AT&T/WorldCom Petition for Rehearing

AT&T/WorldCom ask the Commission to reconsider two issues in the Compliance Order. First, AT&T/Worldcom argue that in the UNE Compliance Order the Commission erroneously failed to require Verizon to revise its tariffs to reflect non-recurring charges (NRCs) based on the 2% fallout rate that the Commission allegedly ordered. Second, AT&T/WorldCom contend that Verizon unilaterally changed the application of rates pertaining to the lease of an Entrance Facility with the result that competitors are subject to an additional fixed charge, without justification in the record.

Non-Recurring Charges – 2% Fallout Rate

"Fallout rate" is the percentage of CLEC orders that cannot be processed electronically by Verizon and must be handled manually. AT&T/WorldCom argue that the Commission failed to require Verizon to apply a 2% fallout rate, which, according to AT&T/WorldCom, was required by the UNE Rate Order to be applied more broadly.[13] According to AT&T/WorldCom, the Commission's finding that "no party excepted to how Verizon applied the 2% fallout rate recommendation in its 'RD compliant rates'"[14] is irrelevant because AT&T/WorldCom were "specifically

[13] The 2% fallout was applied to the Recent Change Memory Access Center (RCMAC) and the Mechanized Loop Administration Center (MLAC). This was consistent with the application of the 2% fallout rate adopted by the Massachusetts Department of Telecommunications and Energy (Massachusetts DTE), which was referred to by AT&T in this proceeding before the Judge and the Commission.

[14] Compliance Order, p.16.

instructed by the Commission that there was 'no need to comment now on purely computational issues in order to preserve the right to raise such issues in connection with the ultimate compliance filing.'"[15] AT&T/WorldCom argue that they cannot now be prejudiced because they followed the instructions in the letter.

Moreover, according to AT&T/WorldCom, the Recommended Decision and the UNE Rate Order each specifically adopted the 2% fallout rate urged by AT&T. In the Recommended Decision, AT&T/WorldCom state that Judge Linsider specifically rejected Verizon's argument and accepted AT&T's when he stated:

> "While Verizon contends its fallout rate is extremely optimistic, the record does not show it to have borne its burden of proving that to be the case. Fallout rates can be expected to decline as experience is gained with more efficient OSS, and it is important that rates here be set on the premise of minimal fallout. *Overall, I recommend the 2% level advocated by AT&T."*[16]

The fact that the Commission intended that the 2% fallout rate apply across the board to all NRCs, according to AT&T/WorldCom, is underscored by Verizon's argument on exceptions that "a 2% across-the-board fallout rate would be unreasonable and contrary to the record in this case."[17] Verizon's general exception was denied, with a single

[15] AT&T/WorldCom Petition for Rehearing, p. 2, citing Letter from Janet Hand Deixler, Secretary to the Commission, to Robert D. Mulvee, Esq., Senior Attorney, AT&T, and Joseph A. Post, Esq., Regulatory Counsel, Verizon New York Inc. (July 10, 2001).

[16] AT&T/WorldCom Petition for Rehearing, p. 9, citing Recommended Decision, p. 190 (emphasis supplied by AT&T/WorldCom).

[17] AT&T/WorldCom Petition for Rehearing, p. 9, citing Verizon's Exceptions to the Recommended Decision, p. 79.

alteration, the Commission concluding "the Judge had ample record basis for his 2% fallout rate."[18]

With regards to the Massachusetts DTE decision, which was referred to by AT&T and in the Recommended Decision and the UNE Rate Order, AT&T/WorldCom suggest it may have generated confusion. AT&T/WorldCom explain that "[t]he 1999 Massachusetts Order adopted a 2% fallout rate and stated that the adoption of the 2% fallout rate would reduce the assigned costs of Bell Atlantic's Recent Change Memory Access Center ("RCMAC") and Mechanized Loop Administration Center ("MLAC"), the two entities which handle fallout from the OSS, to near zero in the NRC study" [footnote omitted].[19] However, AT&T/WorldCom now posit that "[f]or reasons unique to the particular structure of Verizon's cost submission and the record in the Massachusetts proceeding, the 1999 Massachusetts Order did not reference the TISOC [Telecom Services Industry Service Order Center]."[20]

AT&T/WorldCom state that they are not requesting that the Commission order Verizon to lower the NRCs, but only to make the NRCs compliant with the UNE Rate Order. In their view, Verizon has had this argument rejected twice and it should not now be granted due to computational errors made by staff. Further, contrary to Verizon's assertion that staff's calculations were the "law of the case," AT&T/WorldCom assert that such was not the case and, as discussed above, were instructed not to comment on them. The Commission, in

[18] AT&T/WorldCom Petition for Rehearing, p. 9 citing UNE Rate Order, p. 143.

[19] AT&T/WorldCom at 15.

[20] AT&T/WorldCom at 16. Application of the 2% fallout rate to the TISOC, which is an entity that handles fallout from the OSS, would lower Verizon's non-recurring charges.

AT&T/WorldCom's view, has therefore committed an error of law by holding WorldCom and AT&T accountable for not excepting to Verizon's Recommended Decision compliant rates.

According to Verizon, on the other hand, AT&T/WorldCom have a fundamental misunderstanding of the application of the fallout rate. Verizon states that the Commission could not have intended that "all work processes that are involved in the provisioning of UNEs will be fully automated at least 98% of the time."[21] Fallout, as defined by Verizon, "is properly limited to those situations in which orders for valid reason drop out from a normally electronic (or 'flow-through') process. It has no relevance to activities that cannot normally be carried out on a flow-through basis."[22]

Verizon argues that the estimated Recommended Decision rates support its interpretation of fallout. According to Verizon, staff did modify the application of flow-through percentages of less than 98% for certain types of processes and orders. Verizon states that if staff had applied a 2% "manual processing" rate universally, rates would have been much lower and Verizon would have excepted. Further, Verizon states that it excepted to the Recommended Decision's 2% recommendation in one instance, and the Commission agreed with that exception. This underscores, in Verizon's view, that Verizon understood that the 2% fallout factor was to be applied to processes that were not inherently manual in the forward-looking construct. Moreover, the Commission's decision to grant the exception demonstrates that the Commission did not regard the factor as applicable to an activity where manual work was needed.

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[21] Verizon response, p. 3.

[22] Id.

Procedurally, Verizon argues that AT&T/WorldCom are precluded from raising this issue now because they failed to except to these rates at the proper time. AT&T/WorldCom's statement that they were instructed not to comment on purely computational issues is, in Verizon's view, inconsistent with the fact that they did except to other aspects of staff's computations. Further, the application of the 2% factor is a substantive decision, not a computational issue. Therefore, AT&T/WorldCom's decision to raise this issue now is, according to Verizon, in violation of Procedural Rule 4.10.

Discussion

The question presented is to which of the numerous activity work centers that are identified in Verizon's non-recurring cost model did the Commission intend to apply the 2% fallout rate. AT&T/WorldCom claim it should apply to virtually all functions. Verizon contends, on the other hand, that the Commission could not have intended that all work processes that are involved in the provisioning of UNEs will be fully automated at least 98% of the time.

As a threshold matter, Verizon, citing §4.10(d)(2) of the Commission's rules, challenges the petition on procedural grounds. The position advocated by AT&T was adopted in the body of the Recommended Decision, and the Appendix to the Recommended Decision, which described how Verizon's model would be adjusted, applied the 2% fallout rate to only two entities. Contrary to AT&T/WorldCom's claim, the Appendix to the Recommended Decision titled "Summary of Recommended Adjustments to Verizon's Cost Studies" was substantive and provided a concrete application of the decisions reached. Thus, AT&T could have, and should have, excepted. However, because the issue here is what the UNE Rate Order required, not whether it should be modified, we turn to the merits of the petition.

The Recommended Decision applied a 2% fallout rate in the manner set forth in the Appendix to the Recommended Decision. That limited 2% application, which did not include the TISOC, was adopted by the Commission in the UNE Rate Order. AT&T/WorldCom's attempt to now apply the 2% fallout rate to the TISOC is simply not persuasive.

Given the specific limitation on application of the 2% fallout rate in the UNE Rate Order, read with the Appendix to the Recommended Decision, our decision should be construed as applying the 2% fallout rate narrowly. Thus, Verizon's filing will be found to be in compliance with the Commission's decision.

The pleadings in this case do, however, raise questions as to whether the Commission should prospectively apply the 2% fallout rate to entities that handle fallout from the order intake portion of the OSS. Because we now understand that the TISOC is one of the entities that handles fallout from the order intake process, which is a highly automated process, a narrow application of the 2% fallout rate may be incorrect.

Moreover, Verizon's use of a 23% fallout rate for the TISOC is significantly higher than recent, actual fallout rates. As Verizon acknowledges in its response to the AT&T/WorldCom rehearing petition, its fallout rate for all UNE orders has ranged from approximately 7% to 10% over the past nine months, and this range reflects a significant decline from 2000. For these reasons, the Commission will, on its own motion, call for comment on whether the 2% fallout rate should be applied to the TISOC. By a separate Notice, the parties will be given a brief comment opportunity on whether the 2% fallout rate should be applied to the TISOC.

Entrance Facilities

AT&T/WorldCom posit that, throughout the proceeding, Verizon defined "entrance facility" as a type of loop, not part of the loop nor an additive of the loop.[23] Moreover, because of Verizon's definition, entrance facilities were not specifically mentioned in the Recommended Decision nor the UNE Rate Order. However, in the compliance filing, Verizon identified entrance facilities as "interoffice transport entrance facilities," defined as "unbundled transport facilities between the [CLEC's] switch and the [Verizon] serving wire center."

AT&T/WorldCom state that there is no record evidence for this redefinition. Further, while Verizon states that this is a mere reclassification, AT&T/WorldCom argue that it would significantly increase competitors' costs because a CLEC would have to lease three elements to create the same circuit, rather than two. Therefore, competitors would now have to pay three fixed charges, plus mileage.

AT&T/WorldCom state that they are not complaining about the validity of entrance facility rates, rather the issue is whether the application of the rates as set forth in the compliance tariff is consistent with the record in this case. AT&T/WorldCom state that it is not. If Verizon intended that entrance facilities were to be part of interoffice transport, then Verizon had the obligation to set that forth in its testimony and prove it, which it did not do. AT&T/WorldCom suggest two alternatives. First, the Commission can direct Verizon to file tariffs that implement entrance facilities as defined throughout the case. Or, should the Commission determine that the new definition is proper, then due process requires that the parties have an opportunity to examine and

[23] AT&T/WorldCom Petition for Rehearing, pp. 20-21.

litigate the costs of an interoffice transport network that includes entrance facilities.

Verizon refutes AT&T/WorldCom's argument that since Entrance Facilities were discussed in the loop section of Verizon's testimony, the approved rates cannot be applied to anything other than loops. According to Verizon, the facilities between Verizon's serving Wire Center (SWC) and the CLEC switch are part of interoffice facilities (IOF), which is explicitly stated in the FCC's definition of IOF.[24] For AT&T/WorldCom to argue that they were unaware of this configuration, according to Verizon, is not credible. Further, Verizon clearly stated this construct in response to an interrogatory by the CLEC Coalition.[25]

RCN Telecom Services, Inc.

RCN submitted in lieu of a brief a letter dated December 5, 2002 in support of AT&T/WorldCom's petition concerning Entrance Facilities. RCN agrees that Verizon unilaterally changed the definition of entrance facilities with the effect that CLECs must now be collocated at a Verizon central office at one end of a facility and have a switch at the other end. RCN argues that these two conditions are both inconsistent with FCC precedent and rules and are, hence, unlawful. According to RCN, the FCC expressly stated that "There is no requirement that a competitive LEC collocate at the incumbent LEC's wire center or other facility in order to

[24] Verizon response, pp. 14, 15, citing Local Competition Order, ¶440.

[25] Verizon response, pp. 15, 16.

purchase UNE dedicated transport."[26] Further, RCN states that the FCC does not require that dedicated transport be connected to a switching facility. Relying on the definition of dedicated transport,[27] RCN argues that there is no requirement that a switch be present at a CLEC's location, nor is there an order from the FCC requiring such. RCN concludes that the Commission should grant AT&T/WorldCom's petition on this point and direct Verizon to file tariffs that remove entrance facilities from dedicated transport and add it to the loop category without CLEC switching or collocation requirements.

Verizon responded to RCN's letter on December 10 and urges the Commission to reject it on several grounds. First, Verizon states that RCN's pleading is not authorized by §3.7(c) of the Commission's Rules. In addition to RCN summarizing AT&T/ WorldCom's arguments, Verizon states that RCN is introducing new arguments that are not addressed in AT&T/WorldCom's petition. According to Verizon, introduction of new arguments for reversing or modifying an order is not a "response" to a reconsideration petition; rather, it is a new and separate petition seeking rehearing of the Commission's order on separate grounds, which has been untimely filed. Such a filing was due within 30 days of the order, or November 14, 2002. Verizon

[26] RCN at 3, citing Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection disputes with Verizon Virginia, Inc. and for Expedited Arbitration, CC Docket Nos. 00-218 and 00-249, Memorandum Opinion and Order, DA 02-1731 (Chief, Wireline Competition Bureau rel. July 17, 2002), ¶217.

[27] 47 C.F.R. 51.319(d)(1)(A)- Dedicated transport are those transmission facilities "between wire centers owned by the incumbent LECs or requesting carriers, or between switches owned by the incumbent LECs or requesting carriers."

avers that RCN's December 6 filing is unauthorized and should be ignored by the Commission.

With respect to the merits of RCN's claim, Verizon cites Section 5.3.1 of PSC No. 10, which "recognizes that collocation may not be required where an Entrance Facility (or, indeed, IOF in general) is accessed or utilized through UNE combinations such as UNE-P [UNE-Platform], EELs [Expanded Extended Link], or Extended Dedicated Trunk Ports."[28] Positing a "typical EEL arrangement" as an example, Verizon states that the IOF facilities would be connected at a Serving Wire Center and at a second Verizon wire center. At the second wire center, the IOF facilities would be cross-connected to a loop. This would not require collocation, even though the Entrance Facilities are at the CLEC end of the circuit.

Verizon refutes RCN's contention that a switch is required at one end of the entrance facilities. Citing PSC No. 10 Section 5.3.1, Verizon states that its tariff "provides for IOF between locations other than carriers' switches or wire centers, but in those cases no Entrance Facilities are utilized, and thus no Entrance Facility changes apply."[29] In Verizon's view, it is the presence of a carrier's switch that could require the use of Verizon's Entrance Facilities; the Entrance Facilities do not require the use of a switch.

Discussion

The thrust of AT&T/WorldCom's argument is that Verizon, in its UNE Compliance filing, unilaterally expanded the definition of interoffice transport facilities (IOF) to include an additional element, Entrance Facility. Although Verizon

[28] Verizon Response to RCN letter at 4.

[29] Verizon Response to RCN letter at 6 [footnote omitted].

contends that its tariff only reclassified entrance facilities from loop plant to interoffice plant and does not affect the validity of the rates, AT&T/WorldCom conclude that such rates in Verizon's compliance filing are not consistent with the record in this case. If entrance facilities were to be part of the interoffice network, then Verizon's testimony should have clearly said so.

The record in this case reflects a fully litigated examination of the cost studies underlying UNEs proposed by Verizon. Those cost studies, and the supporting testimony and exhibits, addressed the network elements required to complete the interoffice circuit from a CLEC's point of presence through Verizon's interoffice network to an end-user customer.

Verizon's testimony specifically defined that, for cost study purposes, the dedicated interoffice facility element included transmission facilities only between Verizon-owned wire centers. On the other hand, Verizon Entrance Facility cost studies specifically included equipment configurations used to provide a high capacity (DS-1 and above) transport path between a Verizon central office (or Serving Wire Center) and a customer's premises. According to Verizon, the "customer" may be a CLEC end-user customer, in which case the configuration would comprise a high capacity loop. If the "customer" is a Verizon wholesale customer (i.e., a CLEC), the customer's premises would be its wire center or switch location and the equipment would be part of the IOF UNE. Thus, the company's cost studies appropriately examined each element of the full IOF transport path from the CLEC's central office through the Verizon network to the CLEC's end-user customer and there does not appear to be any overlap of charges among those cost elements.

The confusion surrounding this issue appears to be that, in the UNE case, Verizon's supporting documentation for Entrance Facilities was included with the discussion of loop plant rather than with interoffice facilities. But the tariff filing shows Entrance Facility as a part of the IOF transport path. However, as Verizon points out, the equipment configuration studied by Verizon in its Entrance Facility cost studies is used both in some loops and in some IOF arrangements. Thus, where applicable, entrance facility is a valid component of interoffice transport.

The application of the rates set forth in the compliance tariff is consistent with the record in the UNE case. The cost studies underlying the individual elements were part of the record and all parties had the opportunity to examine and litigate the cost of interoffice transport and entrance facilities. AT&T/WorldCom's request to require Verizon to change the non-recurring charges associated with Entrance Facilities will be denied.

Verizon is correct that the Commission should reject RCN's letter submitted in lieu of a brief. Introduction of new arguments that are not addressed in AT&T/WorldCom's petition is not authorized by §3.7(c) of the Commission rules. Further, Verizon has adequately explained that there is no merit to RCN's contention that Verizon is seeking to impose some new collocation or switching requirements on CLECs that wish to use Entrance Facilities.

CONCLUSION

The Commission will: deny Verizon's request to retain "expedite" charges when Verizon is unable to provision services within a shorter interval; deny Verizon's request to restore certain port rates to levels that it set forth in its tariff

filing; deny AT&T/WorldCom's request to direct Verizon to revise the non-recurring charges based on the 2% fallout rate, but issue a separate Notice seeking further comment on whether the 2% fallout rate should be applied to the TISOC; and deny AT&T/WorldCom's request to require Verizon to change the non-recurring charges associated with Entrance Facilities.

The Commission orders:

1. The rehearing petition filed by Verizon New York Inc. is denied.

2. The rehearing petition filed by AT&T Communications of New York with WorldCom, Inc. is denied.

3. The arguments raised by RCN Telecom Service, Inc. in its letter in lieu of a brief are rejected.

4. This proceeding is continued.

By the Commission,

(SIGNED) JANET HAND DEIXLER
Secretary